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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA,)	No. CR 05 00324 MMC
)	
15 Plaintiff,)	UNITED STATES' OPPOSITION TO
)	DEFENDANT'S MOTION FOR
16 v.)	DRUG-LAB RELATED POST-
)	CONVICTION DISCOVERY
17 DENNIS CYRUS, JR.,)	
)	Hearing: September 7, 2010
18 Defendant.)	Time: 10:00AM
)	Court: Honorable Maxine M. Chesney
19)	

20 **INTRODUCTION**

21 The government hereby opposes the motion by defendant Cyrus for post-
22 conviction discovery related to the San Francisco Police Department ("SFPD") crime lab.
23 Defendant's motion should be denied because there is no identifiable right to post-
24 conviction discovery. Even if there were, the information the defendant seeks is in the
25 custody and control of a particular department—the drug lab—of a specific unit—the
26 SFPD crime lab—of a distinct sovereign—the State of California—that cannot be deemed
27 to be part of the "prosecution team" for *Brady* purposes. Even if it were, the United
28 States has provided voluminous discovery on the issue that it obtained by wide-ranging

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subpoena from the SFPD that brings it in full compliance with *Brady*'s disclosure obligations, should they apply in these circumstances. Any follow-up investigation in response to that information desired by the defense is theirs to perform. In any event, the United States is unaware of any additional Rule 16, Jencks Act, or *Brady*-related discovery that has not been disclosed to the defense.

ARGUMENT

1. There Is No Identifiable Right to Post-Conviction Discovery

The defendant has requested numerous areas of discovery regarding issues at the crime lab that surfaced well after trial concluded in this matter. The United States is aware of no provision of law grounding the defendant's request for post-conviction discovery. As the Supreme Court has recently noted, a "criminal defendant proved guilty after a fair trial does not have the same liberty interests as a free man. At trial, the defendant is presumed innocent and may demand that the government prove its case beyond reasonable doubt. But once a defendant has been afforded a fair trial and convicted of the offense for which he was charged, the presumption of innocence disappears." *District Attorney's Office for Third Judicial Dist. v. Osborne*, ___ U.S. ___ (2009 WL 1685601, 11) (2009) (internal quotation and editing marks omitted). As a result, pretrial discovery rights, including *Brady* itself, do not apply once a defendant has been convicted; instead, defendants have "only a limited interest in postconviction relief" and procedures to vindicate those interests are valid unless they "offend[] some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental, or transgress[] any recognized principle of fundamental fairness in operation." *Id.* (internal quotation marks omitted).

The Court ordered certain pre-trial disclosures. The United States complied with those orders and disclosed a substantial amount of information of its own accord prior to and during trial. The defendant has failed to provide any viable authority grounding their request for post-trial discovery, and instead rely primarily on *Brady v. Maryland*, 373

U.S. 83 (1963), which the Supreme Court has held “is the wrong framework.” *District Attorney’s Office for Third Judicial Dist.*, ___ U.S. at ___ (2009 WL 1685601, 11). Accordingly, the defendant’s motion should be denied on this ground.

2. The SFPD Drug Lab Is Not Part of the Prosecution Team

A prosecutor’s *Brady* and discovery obligations extend beyond the information of which he or she is personally aware: “the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case.” *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). The question, then, is who acts “on the government’s behalf” in a federal case such as this one. The Ninth Circuit’s answer to that question is: “The prosecutor will be deemed to have knowledge of and access to anything in the possession, custody or control of any *federal* agency participating in the same investigation of the defendant.” *United States v. Bryan*, 868 F.2d 1032, 1036 (9th Cir. 1989) (emphasis added).

In *Bryan*, the defendant challenged the scope of a Court’s Rule 16/*Brady* discovery order, and specifically the limitation on information within the relevant district. *See id.* The Ninth Circuit rejected such a limitation on geographic scope, but recognized the inherent limitation on sovereignty—the scope of a federal prosecutor’s constructive possession is limited to agents of the federal government. *See id.* The authors of the majority opinion in *United States v. Fort*, 472 F.3d 1106 (9th Cir. 2007), specifically recognized this principle in their concurrence to the denial of en banc review of that case. *See United States v. Fort*, 478 F.3d 1099 (9th Cir. 1999) (Graber and Tallman, J.J.). They stated that while local police reports can become privileged once they are in the *actual* possession of the federal government, “unlike *Bryan*, *Fort* establishes no principle of constructive possession” and thus does not extend *Brady* obligations to all documents within the custody and control of a state investigative agency. *Id.* at 1100.

It is beyond dispute that the SFPD is not a federal agency. Accordingly, the United States has no *Brady* obligation for material that may exist in the custody of the San Francisco Police Department but is not actually possessed by the prosecution in this case.

1 *See id.* And to be clear, the United States is not aware of any undisclosed *Brady* material
2 in its possession originating from the San Francisco Police Department.

3 **3. *Brady* Is a Disclosure Obligation, Not an Investigative Obligation**

4 Despite the fact that the United States has no obligation to obtain or provide any
5 information about the SFPD drug lab in SFPD custody, the government nevertheless
6 voluntarily agreed to work to obtain from SFPD and provide information about the drug
7 lab and Criminalist Deborah Madden to the defense. As stated in Court on August 11,
8 2010, an extremely wide-ranging subpoena was served on SFPD in an effort to obtain as
9 much information as possible about the SFPD drug lab in general and Criminalist
10 Deborah Madden in particular. Nearly all of the material that was responsive to that
11 subpoena has been turned over to the defense.

12 The United States has reviewed that material and found nothing that would cast
13 doubt on any of the defendant's sixteen counts of conviction. None of the material bears
14 any direct relation to the drug tests that were actually performed and introduced at trial.
15 Instead, the information can at best be considered impeachment material and newly
16 discovered "evidence that would merely impeach a witness cannot support a motion for a
17 new trial." *United States v. Kulczyk*, 931 F.2d 542, 548 (9th Cir. 1991).

18 Indeed, despite receiving over 4,200 pages of material on the subject over two
19 months ago, not even the defense has thus far offered a single piece of evidence that
20 would undermine the verdicts in this case. Rather, they have made repeated discovery
21 requests to the federal government for information in SFPD's custody that is equally
22 available to them, while alleging, without evidentiary support, that "something else"
23 might be out there.

24 These requests misunderstand the nature of the prosecution's obligation under
25 *Brady*. At bottom, *Brady* provides defendants a right of access to information in the
26 possession of the prosecutor and his or her investigative agencies. While the prosecution
27 has a duty to "investigate" the investigative agencies' files for exculpatory information,
28 *Kyles*, 514 U.S. at 437, *Brady* and its progeny do not require the government to

1 investigate the potentially favorable *consequences and details* of that information for the
2 defendant. In our adversarial system, that is the work of the defense. *See, e.g., Granviel*
3 *v. Texas*, 495 U.S. 963, 964 (1990) (describing “our adversarial system, in which each
4 party marshals evidence favorable to its side and aggressively challenges the evidence
5 presented by the other side”).

6 The *Brady* Court held “that the *suppression* by the prosecution of evidence
7 favorable to an accused upon request violates due process where the evidence is material
8 either to guilt or to punishment, irrespective of the good faith or bad faith of the
9 prosecution.” 373 U.S. 83, 87 (1963) (emphasis added). It is clear this obligation
10 involves disclosure of evidence and information; it is fundamentally a disclosure
11 obligation.

12 The defendant’s wide-ranging requests amount to a demand that the United States
13 investigate what happened at the SFPD crime lab and how it might affect their client.
14 That is not the government’s obligation. The United States fulfills its *Brady* obligations,
15 for example, by informing a defendant of its knowledge that a witness has a criminal
16 conviction. The United States is aware of no case, however, imposing upon the
17 government a duty to investigate the underlying details of the conduct giving rise to the
18 conviction and in what respects they could be favorable to the accused.

19 Put simply, “[e]vidence is not ‘suppressed’ [under *Brady*] if the defendant either
20 knew, or should have known, of the essential facts permitting him to take advantage of
21 any exculpatory evidence.” *United States v. LeRoy*, 687 F.2d 610, 618 (2d Cir. 1982)
22 (internal citations omitted). In this case, the United States has gone above and beyond its
23 *Brady* obligations and obtained and provided thousands of pages of documents
24 amounting, at the very least, to the “essential facts” about recently publicized issues at the
25 SFPD crime lab and Criminalist Deborah Madden. How, if at all, the defendant follows
26 up with, refines, or otherwise takes advantage of those essential facts is his obligation, not
27 the United States’.

28 In any event, the United States has no reason to question that SFPD has fully

1 complied in good faith with the subpoena served upon them. As such, the United States
2 is unaware of any additional Rule 16, Jencks Act, or *Brady*-related discovery that has not
3 been disclosed to the defense.

4
5 **CONCLUSION**

6 For the reasons stated herein, the government respectfully submits that the Court
7 should deny defendant's latest motion for post-trial discovery.

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9 Date: August 17, 2010

Respectfully submitted,

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